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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

TIM GRGURICH,

Plaintiff,

v.

TRAIL BLAZERS INC., an Oregon
corporation,

Defendant.

Civil No.: 3:05-CV-1516-HA

**PLAINTIFF'S MEMORANDUM OF
LAW IN SUPPORT OF MOTIONS FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

This action involves a dispute between plaintiff and defendant regarding defendant's refusal to let plaintiff out of his contract with defendant and to allow plaintiff, a professional basketball coach, to seek employment with another team. The background of the dispute and plaintiff's claims are summarized in the Complaint on file with the Court.

Fed. R. Civ. P. 65 allows the Court to enter a Temporary Restraining Order ("TRO") and a preliminary injunction. "A TRO is intended to preserve the status quo until the court can rule upon the application for preliminary injunction. The moving party must show either

(1) a combination of probable success on the merits and the possibility of irreparable injury, or (2) that serious questions are raised and the balance of hardships tips sharply in its favor. These are not separate tests, but the outer reaches of a single continuum. Serious questions are those sufficiently substantial to warrant further consideration by the court and to present fair ground for litigation. If the balance of hardships tips decidedly toward the plaintiff, less likelihood of success on the merits is required. The court must also consider the public interest, if applicable.” Konecranes, Inc. v. Sinclair, 340 F.Supp 2d 1126, 1128-1129 (D. Or. 2004) (citations and internal quotations omitted).

Similarly, to “obtain a preliminary injunction, plaintiff must demonstrate either (1) a combination of probable success on the merits and the possibility of irreparable harm, or (2) that serious questions are raised and the balance of hardships tips sharply in favor of the moving party. These are not two distinct tests, but rather are opposite ends of a single continuum in which the required showing of harm varies inversely with the required showing of meritoriousness.” Nike, Inc. v. McCarthy, 285 F.Supp 2d 1242, 1243-1244 (D. Or. 2003), affirmed, 379 F.3d 576 (9th Cir. 2004) (citations and internal quotations omitted).

“The grant or denial of a preliminary injunction motion – or a motion for a TRO – lies within the equitable discretion of the district court. *** The essence of the court’s inquiry is whether the balance of equities favors granting preliminary relief.” League of Wilderness Defenders v. Zielinski, 187 F.Supp 2d 1263, 1267 (D. Or. 2002) (citations omitted).

The reasons why plaintiff needs a TRO and a preliminary injunction preventing defendant from thwarting plaintiff’s efforts to immediately seek employment with another National Basketball Association (“NBA”) team are discussed in detail in plaintiff’s Declaration on file with the Court. The pleadings show the serious issues raised herein.

Most importantly, defendant’s current head coach, Nate McMillan, informed plaintiff in July 2005 that plaintiff will not be on his coaching staff. Mr. McMillan has hired other assistant coaches and replaced plaintiff. Also, defendant has suspended plaintiff without pay

since July 15, 2005, but, at the same time, even though Mr. McMillan refuses to work with plaintiff, defendant will not allow plaintiff to seek employment with another NBA team unless that team compensates plaintiff (such as with a draft pick).

Plaintiff desires and financially needs to immediately obtain employment as an assistant bench coach with another NBA team. Training camps for NBA teams begin next week. **Plaintiff will suffer irreparable financial and professional harm if he is not allowed to sign a new contract with another NBA team for the 2005-2006 season in the next few days because any team he considers will likely hire another assistant coach before the start of training camp next week if plaintiff is unable to sign a contract within the next few days.** (Declaration of Tim Grgurich at ¶18.)

Also, other NBA teams are interested in hiring plaintiff, but are afraid of tampering charges from defendant. *Id.* at ¶19.

Through his Complaint and Declaration, plaintiff has demonstrated that he will probably prevail on the merits of his claims for breach of contract and a declaratory judgment. Also, plaintiff will suffer irreparable financial and professional harm if he is not allowed to immediately seek and obtain employment with another NBA team for the upcoming season.

Moreover, the hardship to plaintiff in being prevented from timely obtaining employment with another NBA team for the upcoming season outweighs any alleged hardship to defendant in continuing to suspend plaintiff without pay, while at the same time no longer allowing plaintiff to continue as an assistant bench coach with defendant (the position plaintiff held last season).

Therefore, for the reasons stated herein, as well as in plaintiff's Complaint and Declaration, plaintiff requests that the Court enter a TRO and preliminary injunction providing that (a) plaintiff is allowed to immediately seek and obtain employment with another NBA team; and (b) defendant shall not in any way interfere with plaintiff's efforts to

seek and obtain employment by another NBA team, including not threatening any NBA team with tampering charges relating to plaintiff, and not requiring or accepting any compensation from any such NBA team in return for plaintiff signing a contract with that team.

Defendant can then litigate whether plaintiff breached his contract and whether defendant is owed anything by plaintiff. This does not cause harm to defendant that outweighs the irreparable harm to plaintiff in being prevented from working during the upcoming NBA season if his TRO and preliminary injunction motions are denied. The balance of hardships tips sharply in plaintiff's favor.

DATED: September 29, 2005.

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BY /s/

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2005, I caused a true and correct copy of the foregoing **PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTIONS FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** to be served on the following persons by the method indicated below:

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